


1 *Luability Litig.*, 654 F.3d 935, 938 (9th Cir. 2011), it is unaware of any reported case
2 sanctioning mediation of an objection to the fairness of a proposed settlement. Because
3 the validity of any objection turns on the strength of that objection to the fairness,
4 reasonableness, and adequacy of the settlement, unless objectors are ready to concede that
5 their objection lacks merit, dealing with it, even in mediation, necessarily requires an
6 examination of the merits of the proposed settlement. Thus, it would seem futile to
7 mediate an objection without the participation of Defendant in the mediation. The court,
8 therefore, is reluctant to defer consideration of the pending motion for final approval of
9 the settlement pending completion of a mediation limited to class counsel and Objectors.

10 The court, however, is willing to refer the proposed settlement and any objections
11 thereto to mediation (and, in fact, encourages it), provided that Defendant, as well as
12 Plaintiffs and Objectors, is willing to participate in such a mediation. The parties² shall
13 inform the court within ten (10) calendar days whether they are agreeable to participating
14 in such a mediation. If so, they should also indicate the agreed-upon mediator – Judge
15 Infante or another neutral – and whether they agree on who is responsible for, or how to
16 divide, the mediator's compensation. If the parties are unable to agree on who is
17 responsible for compensation, their agreement to engage in mediation shall be deemed to
18 include a provision that the court shall decide how the mediator's compensation shall be
19 determined and who shall be responsible for its payment.

20 Dated: April 15, 2014

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A. Wallace Tashima
United States Circuit Judge
Sitting by Designation

² Plaintiffs shall inform the court of Objectors willingness to participate in such a mediation.